

THIRD AMENDED INTERLOCAL AGREEMENT BETWEEN THE PORT OF SEATTLE AND THE PUGET SOUND CLEAN AIR AGENCY FOR A DRAYAGE TRUCK REPLACEMENT PROGRAM

This third amended Interlocal Agreement (“Agreement”) is entered into between the **Puget Sound Clean Air Agency**, (hereinafter referred to as the “Agency”), a municipal corporation under the laws of the State of Washington, and the **Port of Seattle** (hereinafter referred to as “Port”), a Washington municipal corporation, located at Pier 69, 2711 Alaskan Way, Seattle, WA 98111.

WHEREAS, the Port and the Board of Directors of the Agency deem it desirable to amend the original Interlocal agreement No. 2014-052 dated January 2, 2014, and amended October 8, 2014, and June 29, 2015, to incorporate additional funding and to reflect mutually agreeable schedule changes; and

WHEREAS, the Port, which is now part of the Northwest Seaport Alliance, and the Agency have agreed to extend the ScRAPs 2 program to allow more time to expend the Port’s grant funds for truck replacements; and

WHEREAS, the Port, will provide an additional \$90,000 to allow for three extra months of operation at the Truck Center; and

NOW, THEREFORE, the Agency and the Port mutually agree as follows:

A. Interlocal Agreement No. 2014-052, as amended by No. 2014-052-01 and No. 2014-052-02, is hereby amended as follows:

I. Section 2.A.1.a under “Duties of the Agency” is deleted and replaced with the following:

- a. Open and operate a truck outreach center for potential applicants at or near a Port-owned marine terminal, to be in place by May 27, 2014, and to operate through September 30, 2016. If funds available from all grant programs are exhausted prior to September 30, 2016, the Port and the Agency will end the ScRAPs 2 Program earlier by mutual agreement. The Agency will operate the outreach center consistent with the work plan.

II. Section 2.E under “Duties of the Agency” is deleted and replaced with the following:

E. Assist with Outreach to Truck Owners

Assist the Port in conducting an outreach campaign to truck owners that will promote the ScRAPs 2 program. This includes assisting in planning and delivering information to truck owners at a minimum of five events. Obtain approval from the Port prior to initiating additional outreach activities or promotional materials.

Deliverable date: September 30, 2016.

III. Section G under “Duties of the Agency” is deleted and replaced with the following:

G. Launch and Operate Truck Center

- 1) Enter into a License Agreement with the Port for office space for a truck outreach center at the Port’s Terminal 5. If the space becomes committed to another Port user and is no longer available for the ScRAPs Program, the Agency will work with the Port to find an alternate suitable space from which to run the program. Terms and conditions to use Port property are set forth in the License Agreement attached hereto as Attachment E and Attachment E-1 and incorporated by reference.
- 2) Open the truck center to the drayage truck community and accept and process truck replacement or upgrade authorization requests. Deliverable date: May 27, 2014, through September 30, 2016. If grant funds are exhausted prior to September 30, 2016, the Port and the Agency will end the ScRAPs 2 program earlier by mutual agreement.
- 3) Complete all incentive processing for approved truck replacements, upgrade kits and retrofit kits. Deliverable Dates:
 - a. December 31, 2016 for the CMAQ/Ecology grant program;
 - b. February 29, 2016, for the DERA grant program;
 - c. December 31, 2016, for the CMAQ Supplemental grant program.

IV. Section 2.I.4 under “Duties of the Agency” is deleted and replaced with the following:

- 4) Submit final project reports summarizing results of programs and project costs. Verify all files are complete. Deliverable dates:
 - a. January 31, 2017, for the CMAQ/Ecology grant program;
 - b. March 31, 2016, for the DERA grant program;
 - c. January 31, 2017, for the CMAQ Supplemental grant program.

V. Section 3.I under “Duties of the Port” is deleted and replaced with the following:

I. Lead Outreach and Marketing Efforts

Lead an outreach and marketing effort to engage candidate drayage truckers in the ScRAPs 2 Program.

Deliverable date: September 30, 2016.

VI. Section 3.J.1 under “Duties of the Port” is deleted and replaced with the following:

1. Office Space. The Port shall enter into a License Agreement with the Agency for office space for a truck outreach center at the Port’s Terminal 5. Terms and conditions to use Port property are set forth in the License Agreement attached hereto as Attachment E and Attachment E-1 and incorporated by reference. If the space at Terminal 5 becomes committed to another Port tenant and is no longer available for the ScRAPs Program,

the Port will first try to identify other suitable office space on Port property. If no alternative space is available on Port property, the Port will work with the Agency to find space near Port property and will reimburse the Agency for the cost of that space. The Port shall have the right to terminate any License Agreement for Port-owned ScRAPs office space, but must provide the Agency no less than ninety (90) days' notice before terminating the License Agreement.

VII. Section 5.A "Compensation" is deleted and replaced with the following:

- A. The total amount paid by the Port for satisfactory performance of the work under this Agreement shall not exceed six million, four hundred thirty-eight thousand dollars (\$6,438,000). Up to five million, four hundred thirty thousand dollars (\$5,430,000) will be to provide financial incentives to the truck owners; up to one million, eight thousand dollars (\$1,008,000) will be to cover the Agency's administrative costs, and will be paid on a time and expense basis. The estimated costs to administer the DERA, CMAQ/Ecology, and CMAQ Supplemental grant programs are described in Attachment F, which is hereby incorporated by reference. The Port and the Agency may mutually agree to modifications to the cost breakdown and hourly rates shown in Attachment F.


VIII. Section 7, "Term," is deleted and replaced with the following:

7. **Term.** The effective date of this Agreement is December 31, 2013. The termination date of this Agreement is March 31, 2017.
- B. All other terms, attachments and conditions of original Agreement No. 2014-052, as amended by No. 2014-052-01 and No. 2014-052-02, remain in full force and effect.**

IN WITNESS HEREOF, the Agency and the Port have executed this amended Interlocal Agreement No. 2014-052-3 as to the date first above written.

PUGET SOUND CLEAN AIR AGENCY

PORT OF SEATTLE

By: 
Paul Roberts
Board of Directors, Chair

By: 
Ted J. Fick
Chief Executive Officer

Date: 3/24/16

Date: 3/4/2016

Attest:

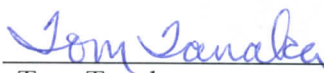
By: 
Craig T. Kenworthy

Date: 3/17/16

Approved as to Form:

By: 
Jennifer Dold
Agency Counsel

Date: 3/14/16

By: 
Tom Tanaka
Senior Port Counsel

Date: 3/4/16

ORIGINAL

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is entered into as of January 28, 2016 by and between the PORT OF SEATTLE, a Washington Municipal corporation ("the Port"), acting through its agent, THE NORTHWEST SEAPORT ALLIANCE, a Washington port development authority (the "NWSA"), and PUGET SOUND CLEAN AIR AGENCY, a Washington municipal corporation, with headquarters located at 1904 3rd Avenue, Suite 105, Seattle, Washington, 98101 ("Licensee").

WHEREAS, the Port and Licensee have entered into an Interlocal Agreement dated December 31, 2013 for a drayage truck replacement program; and

WHEREAS, the Port has agreed to provide the Licensee with office space, office furniture and equipment, and all utilities and services to serve as a drayage truck outreach center; and

WHEREAS, the Port owns certain property located at Terminal 5 and commonly referred to the Container Freight Station ("CFS"), 3520 26th Ave SW, Seattle, Washington, 98106, and Licensee wishes to use approximately 2,050 square feet of office area, along with adjacent parking area (the "Premises"), to serve as a drayage truck outreach center in support of implementing the drayage truck scrappage and replacement program referred to as Scrappage and Replacement for Air in Puget Sound II ("the Permitted Use").

THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the Port and Licensee agree as follows:

1. Agreement is a License. The relationship between the Port and Licensee is not one of landlord and tenant, but rather one of licensor and licensee. The incurrence of any costs with respect to the Premises or Permitted Use by Licensee shall in no way operate to confer upon Licensee any other interest, status, or estate of any kind other than licensee nor obligate the Port to enter into any agreement conferring such other interest. Licensee shall have no recourse against the Port for any breach hereunder.
2. Grant of Right. Subject to the terms and provisions of this Agreement, the Port hereby grants to Licensee the non-exclusive right to use the Premises to serve as a drayage truck outreach center for the Scrappage and Replacement for Air in Puget Sound II program. The Premises are shown on Exhibit "A" attached hereto and made a part hereof. The Port will have the ability to reconfigure the Premises upon written notice delivered to Licensee.
3. Term. This License shall commence on February 1, 2016, and terminate on September 30, 2016. It shall not be subject to extension or renewal without the express written consent of the Port.
4. Terminal Security. Licensee will comply at all times with all local, state, and federal laws, rules, and regulations relating to security ("Security Laws") at any Port facility. If the Premises are subject to a government-approved security plan ("Security Plan"),

Licensee will fully and promptly comply with the Security Plan. If the Premises are not subject to a Security Plan and if Licensee undertakes any activity or handles any cargo that brings the Premises or surrounding area under the Security Laws, Licensee will be fully liable for all its costs and Port costs associated with complying with the Security Laws for the Premises and surrounding areas. Licensee will provide the Port evidence satisfactory to the Port that the appropriate government authority has approved any Licensee-prepared security plan. Licensee will be liable for any fines or penalties for its failure to comply with the Security Laws or the Security Plan whether assessed against Licensee or the Port.

5. Environmental. Licensee agrees to comply with all applicable rules and regulations of the Port pertaining to the Premises in existence or hereafter promulgated for water quality and pollution prevention, for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Licensee further agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters.
6. Utilities. The Port will provide the Licensee with the following utility services to the Premises: janitorial and garbage collection services, electricity, water, surface water management fee (drainage), and security alarm monitoring. The Licensee will be responsible for any other services required.
7. Licensee Responsible for Safety and Property. Licensee specifically accepts the Premises in their present condition on an as-is, where-is basis. Licensee's activities within, on or about the Premises shall be at Licensee's sole risk, and the Port shall not be responsible for the safety of Licensee, its employees, agents, licensees or invitees, or for the condition or loss of any items of personal property brought onto the Premises by any of them.
8. Compliance with Laws, Rules, and Regulations. Licensee shall, at its sole cost and expense, use and/or occupy the Premises solely: (i) in the manner contemplated by this License, (ii) in an orderly manner so as to avoid unreasonably interfering with or interrupting the normal business operations and quiet enjoyment of the other occupants of the Premises or adjoining properties or premises, and (iii) in full compliance with all applicable governmental laws, rules, regulations, and codes, specifically including those related to the protection of the environment and those promulgated by the Port for the general safety and convenience of its customers and the public. Licensee also shall, at its sole cost and expense, obtain any and all permits, licenses, and approvals that may be required in order to make lawful the Licensee's activities on the Premises.
9. Indemnification/Hold Harmless. Each party to this agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement.
10. Insurance. Licensee shall provide the following insurance coverage which it shall obtain from commercial insurance carriers and this coverage shall be maintained throughout the term of the License.
 - i. Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or an equivalent policy form) for third party property damage, bodily injury,

personal and advertising injury, and medical payments in an amount which is not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

- ii. Licensee's insurance shall be primary and non-contributory with respect to any insurance the Port or NWSA carries and apply separately to each insured. The Port and NWSA shall be named as an additional insured on this policy.
 - a. Licensee shall submit to the Port a Certificate of Insurance which shows that it has obtained the required coverage(s) and a copy of the additional insured endorsement for the commercial general liability insurance policy.. The stated insurance limits shall not be construed as to relieve the Licensee from liability in excess of the limits. All deductibles or self-insurance retentions are the responsibility of Licensee.
 - b. Licensee shall have the option of providing a program of self-insurance in lieu of commercial insurance. "Self-Insurance" shall mean that Licensee is acting as though it were the insurance company providing the required insurance. Licensee will have to provide evidence to the Port that Licensee's self-insurance program demonstrates a financial worth of sufficient capacity to finance claims, losses, and defense obligations that would otherwise be covered by the commercial insurance specified above. If the Port does not accept in whole or in part, Licensee's self-insurance program, Licensee shall provide commercial insurance as required by this Section.
11. Termination of Agreement. Notwithstanding any specific term set forth in this License, the Port may terminate this License, in its sole discretion and for any reason whatsoever, effective upon delivery of ninety (90) days written notice to Licensee at the address set forth above.
 12. Attorneys' Fees. In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorneys' fees and costs.
 13. Entire Agreement. This letter sets forth all covenants, promises, agreements, conditions and understandings between the Port and Licensee concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Port and Licensee other than as set forth in this Agreement. No subsequent alteration, amendment, change or addition to this Licensee shall be binding upon the Port or Licensee unless reduced to writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE PORT OF SEATTLE
through its agent, The Northwest Seaport Alliance

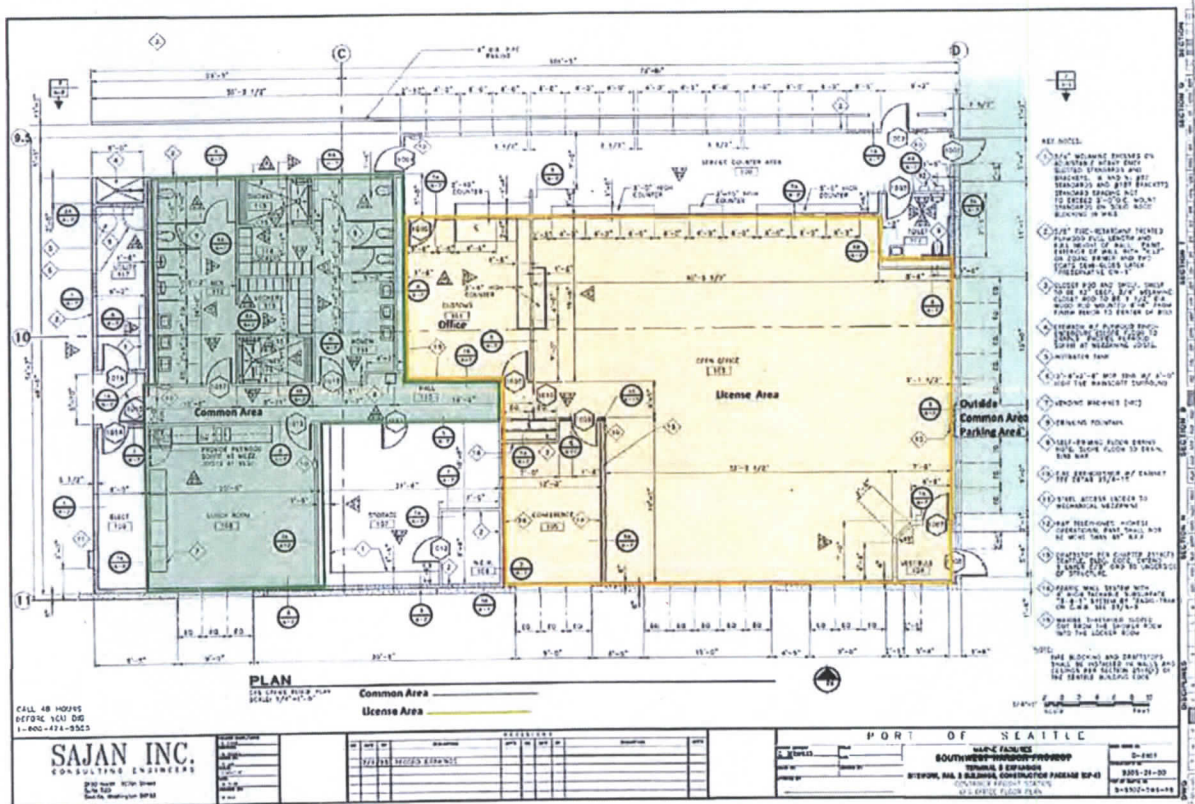
By: Michael A. Campanaro
Print Name: Michael A. Campanaro
Its: Director, Alliance Real Estate

PUGET SOUND CLEAN AIR AGENCY

By: CRAIG KENWORTHY
Print Name: Craig Kenworthy
Its: EXECUTIVE DIRECTOR

– PREMISES –

Terminal 5 Container Freight Station (CFS) Building



3) In general, the CMAQ/Ecology grant, will cover non-grant specific administration costs, while that project is underway, and within project budget limits . However, funding from the other two grants programs or the contingency fund may be applied to non-grant specific administration cost per mutual Agreement from the Port, the Agency, and funding partners.

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OTHER EXPENSES - DETAILED		Category			
Equipment, Supplies, Miscellaneous		CMAQ Only	DERA Only	CMAQ Supplemental	TOTAL
Zipcar	utilities	\$ 603		\$ 154	\$ 757
Mileage Reimbursement - \$ 0.565 per miles	equip.supp, misc	\$ 14,242	\$ 954	\$ 1,246	\$ 16,442
Laptop Computers, docking stations, keyboards and mice (3)	one-time purchase	\$ 4,110			\$ 4,110
Computer Monitors (3)	one-time purchase	\$ 900			\$ 900
Wi-Fi Router	one-time purchase	\$ 100			\$ 100
Printer/copier	one-time purchase	\$ 1,200			\$ 1,200
Flyer printing	equip.supp, misc	\$ 2,414		\$ 211	\$ 2,625
Printer and office supplies	equip.supp, misc	\$ 3,621		\$ 317	\$ 3,937
Postage and Delivery	equip.supp, misc	\$ 3,621		\$ 317	\$ 3,937
Cell phone service for program manager	utilities	\$ 2,293		\$ 438	\$ 2,732
Two Digital Cameras, memory cards	one-time purchase	\$ 500			\$ 500
Truck lien search	one-time purchase	\$ 500			\$ 500
Basic tools and shop and storm water supplies	one-time purchase	\$ 1,000			\$ 1,000
SonicWall Net Extender VPN license (3)	one-time purchase	\$ 120			\$ 120
Antivirus Software (3)	one-time purchase	\$ 90			\$ 90
MS Office Software licenses (3)	one-time purchase	\$ 975			\$ 975
Phone and Internet	utilities	\$ 5,069		\$ 900	\$ 5,969
TOTAL		\$ 41,358	\$ 954	\$ 3,582	\$ 45,894